

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (hereinafter the
3 “Agreement”) is entered into by and between the following Parties: Wilburn
4 Edwards, (Plaintiff), Taverna Plaka Restaurant, Inc., Greek Kitchens of Atlanta,
5 LLC, Stylianos Kyriacou and Nabil A. Saleh (Defendants) (collectively the
6 “Parties”):

7
8 WHEREAS, Plaintiff and Defendants are parties to a civil action pending in
9 the United States District Court for the Northern District of Georgia, Atlanta
10 Division, styled *Wilburn Edwards, Plaintiff, v. Taverna Plaka Restaurant, Inc.,*
11 *Greek Kitchens of Atlanta, LLC, Stylianos Kyriacou and Nabil A. Saleh,*
12 *Defendants*, Civil Action No. 1:14-cv-00650-WSD (hereinafter referred to as the
13 “Litigation”), which action arises out of or relates to the employment of or work
14 performed by Plaintiff;

15
16 WHEREAS, pursuant to the Litigation, Plaintiff claims that the Defendants
17 intentionally and willfully failed to pay him the required compensation under the
18 Fair Labor Standards Act (“FLSA”) and Defendants deny these allegations;

19
20 WHEREAS, Plaintiff and Defendants desire to enter into an agreement
21 resolving and settling all claims, allegations and causes of action asserted or which
22 could have been asserted by Plaintiff in the Litigation that arise out of or relate to
23 compensation for any work performed by Plaintiff for Defendants;

24
25 WHEREAS, Plaintiff warrants and represents that he has not assigned any of
26 the claims against Defendants that are released in this Agreement to any other
27 person or entity and that no attorneys other than Charles R. Bridgers and Kevin D.
28 Fitzpatrick, Jr. of DeLong Caldwell Bridgers & Fitzpatrick, LLC have a claim for
29 attorneys’ fees and/or costs arising from Plaintiff’ claims released in this
30 Agreement; and

31
32 WHEREAS, this Agreement constitutes a good faith settlement of all of
33 Plaintiff’ disputed claims and allegations that were asserted or could have been
34 asserted by Plaintiff in the Litigation arising out of or relating to compensation for
35 any work performed by Plaintiff for Defendants, and shall not be deemed in any
36 manner an admission, finding, or indication, for any purposes whatsoever, that the
37 Defendants, or any of their officers, employees, and/or other agents acted contrary

38 to law or violated the rights of Plaintiff or any other person at any time.

39
40 NOW, THEREFORE, in consideration of the mutual covenants and
41 promises set forth herein, and for other good and valuable consideration, the
42 receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree
43 as follows:

44 1. **Consideration.** In consideration of this Agreement and other good
45 and sufficient consideration, including Plaintiff's agreement to dismiss with
46 prejudice the Litigation, Defendants agree to pay a total sum of Seventeen
47 Thousand Dollars and No Cents (\$17,000.00), payable as follows:

48
49 a. The sum of Five Thousand Dollars and 00/100 cents (\$5,000.00)
50 payable to *Wilburn Edwards* in the form of a check for alleged
51 unpaid wages from which all federal, state, and other applicable taxes
52 and withholdings shall be subtracted and for which Plaintiff will
53 receive a Form W-2, which was delivered to Plaintiff's counsel on
54 May 15, 2014.

55
56 b. Five Thousand Dollars and 00/100 cents (\$5,000.00) payable to
57 *Wilburn Edwards* in the form of a check for alleged liquidated
58 damages (with no withholdings or deductions) for which a Form 1099
59 which indicates payment in "Box 3" as other income, which was
60 delivered to Plaintiff's counsel on May 15, 2014.

61
62 c. The sum of Seven Thousand Dollars and 00/100 cents (\$7,000.00) to
63 Kevin D. Fitzpatrick, Jr. (Plaintiff's counsel) for attorneys' fees and
64 costs, by way of a check for which a Form 1099 shall issue to
65 Plaintiff's counsel and Plaintiff, which was delivered to Plaintiff's
66 counsel on May 15, 2014.

67
68 d. Plaintiff agrees to pay all taxes, if any, which may be deemed owing
69 on the payments under this section, except for Defendants' portion of
70 FICA and other employer portion tax contributions associated with the

71 payment designated as unpaid wages. Plaintiff further agrees that he
 72 will indemnify and hold Defendants and their related and affiliated
 73 entities harmless from and against any taxes, penalties and/or interest
 74 that might arise from any challenge by the Internal Revenue Service
 75 or similar state agency to his tax treatment of any amounts paid to
 76 him, except for any challenge associated with Defendants'
 77 responsibility for the employer portion of FICA and other employer
 78 portion tax contributions associated with the payment designated as
 79 unpaid wages.
 80

81 e. Plaintiff represent and warrant that Charles R. Bridgers and Kevin D.
 82 Fitzpatrick, Jr. and the firm of DeLong Caldwell Bridgers &
 83 Fitzpatrick, LLC are and have been the sole attorneys for them with
 84 respect to the Litigation and all claims set forth therein; that no other
 85 attorney or law firm has any claim for legal fees, costs, and/or
 86 expenses relating to the Litigation; and that all legal fees, costs, and/or
 87 expenses for which Defendant could be liable in connection with the
 88 Litigation are discharged.
 89

90 f. The settlement checks described in paragraphs 1 a. through c. shall
 91 shall be held in trust by Plaintiff's counsel until such time as the Court
 92 approves this Settlement. If the Court does not approve this
 93 settlement, counsel shall return the settlement checks to Defendants.
 94

95 2. **Release & Waiver of All Claims.** In exchange for the payments set
 96 forth above, and other good and valuable consideration, the receipt of which is
 97 hereby acknowledged, Plaintiff, his heirs and assigns, fully and absolutely
 98 **RELEASE AND FOREVER DISCHARGE** Defendants, and each of their
 99 present and former parents, subsidiaries, affiliates, divisions, predecessors,
 100 successors and assigns, and the present and former directors, officers, employees,
 101 agents, insurers, shareholders, attorneys, partners, consultants, managers, and
 102 representatives (whether in their corporate or individual capacities), and all persons
 103 acting by, through, under or in concert with any of them, whether past, present or
 104 future (collectively "Released Parties"), from any and all allegations, claims,
 105 demands, rights, charges, actions, causes of action, liabilities, damages, costs,
 106 attorneys' fees and expenses, whether known or unknown, which were asserted or
 107 which could have been asserted in the Litigation and which are based on, related

to, or arise from the alleged failure by Defendants to properly compensate Plaintiff for all hours worked. This release specifically includes all claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, as well as all other federal, state, local, statutory or common laws relating to the alleged failure by Defendants to compensate Plaintiff for all time worked.

3. **Court Approval.** All Parties agree that, upon execution of this Agreement, Plaintiff shall file a joint motion for approval of the settlement to the United States District Judge before whom this Litigation is pending for the purposes of obtaining court approval in accordance with the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* All Parties agree that they will set the motion for hearing as soon as possible, if necessary. If the District Court does not approve this Agreement, it shall be void *ab initio*.

4. **Dismissal of Action.**

- a. Upon judicial approval of the Agreement, Plaintiff, through counsel of record, agrees to fully execute and file the Stipulation of Dismissal with Prejudice attached hereto as Exhibit 1, with the court within two (2) business days.
- b. Plaintiff represents that as of the date Plaintiff signs this Agreement, he has not filed or initiated, or caused to be filed or initiated, any complaint, claim, action or lawsuit of any kind against any of the Released Parties in any federal, state or local court or agency other than the Litigation. Plaintiff agrees not to initiate or file, or cause to be initiated or filed, any action, lawsuit, complaint or proceeding asserting any of the claims released by this Agreement against any of the Released Parties. Plaintiff further agrees not to be a member of any class or collective action in any court or in any arbitration proceeding seeking relief against the Released Parties based on claims released by this Agreement, and that even if a court or arbitrator rules that Plaintiff may not waive a claim released by this Agreement, Plaintiff will not accept any money damages or other relief.

142

143 5. **Confidentiality.** The Parties agree that all matters relating to the
144 settlement between the Parties set forth in this Settlement Agreement are strictly
145 confidential. Without limiting the generality of the preceding sentence, the Parties
146 agree (a) to use their best efforts to prevent disclosure of the terms of the
147 Agreement; (b) to avoid direct or indirect references, whether by actions or words,
148 to the terms of the Agreement; (c) not to initiate discussions, correspondence, or
149 other communications, including by electronic means, regarding the terms of the
150 Agreement; (d) to confine any remarks relating directly or indirectly to the terms of
151 the Agreement to a statement to the effect that “the matters have been resolved to
152 the mutual satisfaction of all interested parties;” and (e) not to show the Agreement
153 to or discuss its contents with any individual, organization or entity of any kind
154 other than the Parties’ attorneys, current spouses, accountants, tax advisers and
155 preparers, the Internal Revenue Service, the relevant State Department of Revenue,
156 or such other individuals or entities as the Parties may otherwise be required by
157 law to make such a disclosure. The Parties understand and acknowledge that the
158 foregoing is a material term of the settlement embodied in the Agreement between
159 the Parties.

160

161 6. **Execution.** This Agreement shall become effective upon its approval
162 by the court. The Parties may execute this Agreement in counterparts, and
163 execution in counterparts shall have the same force and effect as if the Parties had
164 signed the same instrument. Execution delivered by facsimile or electronic mail to
165 the Parties’ counsel of record shall be deemed effective as if executed in original.

166

167 7. **Entire Release.** Plaintiff affirms that the only consideration for his
168 decision to execute and his execution of the Agreement are the terms stated herein
169 and that there are no other promises or arrangements of any kind which have
170 caused him to execute the Agreement; that he has been advised to and has
171 consulted with his attorneys regarding the terms, conditions and the final and
172 binding effect of this Agreement; and he understands the meaning of the
173 Agreement and its final and binding effect.

174

175 8. **Severability.** Each provision of this Agreement shall be considered
176 separable, distinct and severable from the other and remaining provisions, and any

breach, invalidity or unenforceability of any provision shall not impair the operation, validity or enforceability of those provisions that are valid and, to the extent allowed by law, such invalid or otherwise unenforceable provision may be modified by a court of competent jurisdiction so as to render it enforceable. Notwithstanding the foregoing sentence, if Paragraphs 1 or 2 are found to be invalid by a court of competent jurisdiction, the entire Agreement is invalid.

9. **Amendments.** Any modification or change to this Agreement must be made in writing and signed by all Parties.

10. **Construction.** The language contained in this Agreement shall be deemed to be approved jointly by the Parties, and no rule of strict construction shall be applied against any Party hereto. No provision of this Agreement is inferred or shall be interpreted or applied so as to preclude any Party to this Agreement from complying with any federal, state, or local law, rule, or regulation.

11. **Governing Law.** This Agreement is executed in the State of Georgia and all terms of this Agreement shall be governed and construed pursuant to the laws of the State of Georgia.

Each Party further warrants and represents as follows: **I HAVE CAREFULLY READ AND FULLY UNDERSTAND THE PROVISIONS OF THIS AGREEMENT INCLUDING PLAINTIFF' WAIVER OF CLAIMS AGAINST TAVERNA PLAKA RESTAURANT, INC., GREEK KITCHENS OF ATLANTA, LLC, INC., STYLIANOS KYRIACOU AND NABIL A. SABEH, AND THE RELEASEES. I HAVE ENTERED INTO THIS AGREEMENT KNOWINGLY AND VOLUNTARILY AS AN ACT OF MY OWN FREE WILL AND HAVE NOT RELIED UPON ANY OTHER REPRESENTATION OR STATEMENT, WRITTEN OR ORAL. I HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY AND, IF NECESSARY, WITH OTHER PERSONAL ADVISORS OF MY CHOOSING, PRIOR TO EXECUTING THIS AGREEMENT AND WAIVING ANY AND ALL CLAIMS, AND I HAVE HAD SUFFICIENT TIME AND OPPORTUNITY TO DO SO.**

210 IN WITNESS WHEREOF, the undersigned have executed this Settlement
211 Agreement and Release consisting of seven (7) pages effective May 15, 2014.

212 **ACCEPTED AND AGREED BY WILBURN EDWARDS**

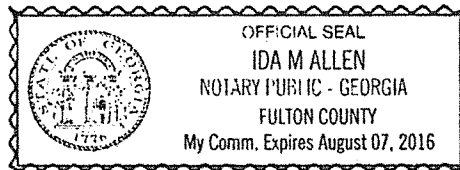
213 By:

214 *Wilburn Edwards*
215 Wilburn Edwards

216 Sworn and subscribed
217 before me this 15th day
218 of May 2014

219
220 *Ida M. Allen*

221 Notary Public



223 My commission expires *August 7, 2016*
224

225 **SO AGREED AND APPROVED BY KEVIN D. FITZPATRICK, JR'**

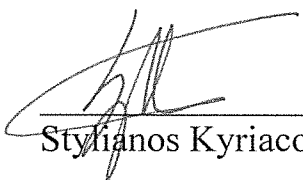
226
227 *Kevin D. Fitzpatrick, Jr.*
228 Kevin D. Fitzpatrick, Jr.

229 DeLong Caldwell Bridgers & Fitzpatrick, LLC
230
231

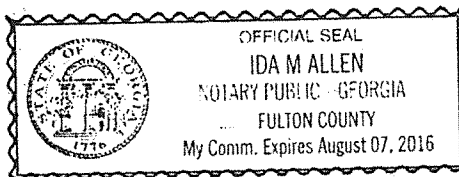
232 **ACCEPTED AND AGREED BY TAVERNA PLAKA RESTAURANT, INC.**

234 TAVERNA PLAKA RESTAURANT, INC.

236 By:

237 
Stylianos Kyriacou, Its Principal

238 Sworn and subscribed
239 before me this 15th day
240 of May 2014



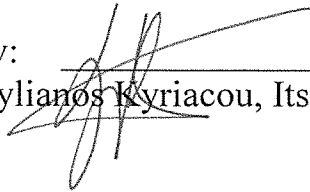
242 

243 Notary Public

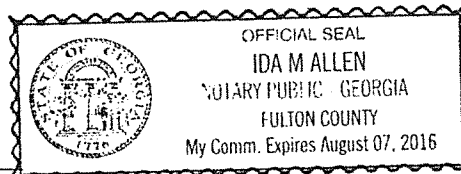
245 My commission expires August 7, 2016

247 **ACCEPTED AND AGREED BY GREEK KITCHENS OF ATLANTA, LLC**

248 By:

249 
Stylianos Kyriacou, Its Principal

252 Sworn and subscribed
253 before me this 15TH day
254 of May 2014



256 

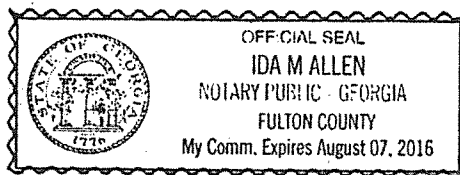
257 Notary Public

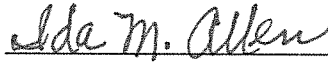
259 My commission expires August 7, 2016

260
261
262 **ACCEPTED AND AGREED BY STYLIANOS KYRIACOU,**

263
264 By: 
265 Stylianos Kyriacou,

266
267
268 Sworn and subscribed
269 before me this 15TH day
270 of May 2014
271



272 
273 Notary Public

274
275 My commission expires August 1, 2016
276
277

278 **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

WILBURN EDWARDS,

Plaintiff,

vs.

**TAVERNA PLAKA RESTAURANT,
INC., GREEK KITCHENS OF
ATLANTA, LLC, STYLIANOS
KYRIACOU and NABIL A. SALEH,**

Defendants.

:
:
:
: **Civil Action Number:**
:
: **1:14-cv-00650-WSD**
:
:
:
:
:

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the Plaintiff, by and through their undersigned counsel of record, hereby stipulates and agrees to the dismissal with prejudice of the above-captioned action. Except as otherwise agreed between the parties, each party shall bear its own attorneys' fees and costs.

Respectfully submitted,

**DELONG CALDWELL BRIDGERS
& FITZPATRICK, LLC**

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Atlanta, Georgia 30303
(770) 979-3150
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charlesbridgers@dcbflegal.com

s/ Kevin D. Fitzpatrick, Jr.
Kevin D. Fitzpatrick, Jr.
Georgia Bar No. 262375
Charles R. Bridgers
Georgia Bar No. 080791
Counsel for Plaintiff

